(3)

NO. 87-1109

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

MARY CATHERINE HALVORSEN,

Petitioner,

vs.

FERGUSON & BURDELL,

Respondents.

REPLY BRIEF OF PETITIONER IN REBUTTAL

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTION PRESENTED FOR REVIEW

(1) Respondents are answering petitioner's petition and cannot change the questions to what they would like them to be.

The dismissal of the case in District Court was for "lack of a genuine material issue of fact" although petitioner had three experts ready and willing to testify.

There is no statement that her case had been concluded adversely in state court.

The issue in this case is whether a Circuit Court other than the one designated can accept an appeal where the petitioner has shown that prejudice exists in the designated Circuit.

(2) Respondent has asked for sanctions because of the contention that any pro se's petition is "frivolous" while petitioner maintains that frivolous violates equal application of the law.

PARTIES TO THIS PROCEEDING

Petitioner is Mary Catherine Halvorsen.

Respondents are the law firm of Ferguson & Burdell and the partners of the firm.

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A. REPLY TO OPINION OF COURTS BELOW

The United States District Court for the Western District of Washington dismissed the Complaint because "there are no genuine issues of material fact" . There is no mention of issues being already litigated. Considering that the Complaint filed in District Court by Petitioner challenges the decision in the Halvorsen v. Ferguson & Burdell 46 Wn. App. 708, 735 P.2d 675; and Daugert v. Pappas 104 Wn.2d 254, 704 P.2d 600 as unconstitutional, it could hardly have been litigated.

Sanctions imposed for a "frivolous" suit are meaningless. "Frivolous" is not defined. It introduces an arbitrary element into the law. Any judge can impose sanctions as he/she pleases. This is not law; this is tyranny.

B. STATEMENT OF JURISDICTIONAL GROUNDS

Somehow there is some misunderstanding on respondents' part regarding jurisdiction. 28 U.S.C. 1331 is not cited. 28 U.S.C. 1331 is

C. REPLY TO STATUTES AT ISSUE IN THE CASE

"Frivolous" is a term not defined and no standards can be applied to it. As stated above, this introduces an arbitrary element into the law and was probably invented by defense insurance attorneys. That way the term"frivolous" can become a weapon to discourage people from exercising their constitutional rights. This type of Rule should be rescinded and abolished.

D. REPLY TO STATEMENT OF THE CASE

Petitioner's divorce case is not the issue in this appeal and she feels this is raised to divert attention from the real issue.

However, since respondents have brought the matter up, petitioner is compelled to reply. In the divorce case she was indeed represented by Ferguson & Burdell, who always assured her what excellent attorneys they were. The results of their representation were that the husband was awarded five and one-half million dollars in assets while petitioner was awarded fifty thousand dollars and

custody as "fair, just and equitable." Fifty thousand dollars just happened to be what Ferguson & Burdell wanted in attorneys' fees.

Petitioner sued Ferguson & Burdell for malpractice after the appellate judge adamantly stated the arguments made on appeal had not been made in the lower court and could not be considered on appeal. Karr, Tuttle et al., undertook to represent Ferguson & Burdell in their defense insurance capacity.

Petitioner had three experts ready and willing to testify that Ferguson & Burdell committed malpractice against petitioner. The law is that if any plaintiff has one expert, Summary Judgment cannot be granted. Despite the three experts, Judge Petersen, (a judge picked by Karr, Tuttle) after forthrightly stating that he wasn't going to let a jury hear this case, granted Summary Judgment.

The Court of Appeals in Washington State changed the law for legal malpractice; i.e., in Halvorsen v. Ferguson & Burdell, supra., and Daugert v. Pappas, supra., the Court stated that a judge can

decide whether to allow a jury trial. This, of course, leaves the decision to the whim of one man. There is no law involved. It violates the Constitutional right to a trial by jury.

Respondents cite the case of Halvorsen v. the State of Washington (W.D. Wash. No. C82-1169), aff'd, ___ F.2d ___ (9th Cir. 1984)(Cause No. 83-3828) to obfuscate the issue. This was suit under color of law and has nothing to do with this case. That particular case asked the District Court to remove the malpractice case to District Court and accept jurisdiction. The District Court declined, dismissing the respondents so that the malpractice action could go forward in the state court.

Judges Pearson, Reed and Petrich were also sued in that case because they "retroactively waived" a law to give a lower court a jurisdcition it did not have! They also upheld Judge Jack P. Scholfield's award to her ex-husband to search her home four times a year, wantonly violating her fourth amendment rights.

The Ninth Circuit panel was composed of Judges Choi, Goodwin and Anthony Kennedy, the latter of comparable worth fame (or infamy depending on your point of view). These three did not bother to ascertain the facts and were unaware that petitioner had seen three attorneys who felt she had a very good case for the Ninth Circuit. The problem was that each wanted approximately $10,000.00 to pursue her case, a sum petitioner did not have, which precluded her from having attorneys represent her before that appellate court.

The three judge panel declared out of the blue that if petitioner had consulted an attorney she would have been informed that she had no case! One wonders how these people arrive at their opinions that binding on the people. It is however, indicative of the Ninth Circuit's thinking regarding women pro se.

Petitioner is not re-litigating these issues. She has no way of knowing whether respondents/attorneys are so dense they honestly miss the point, or if this is strategy to confuse the court.

Be all that as it may, the malpractice suit, as stated on page 3, proceeded in state court.

When her appeal was turned down, petitioner filed her case in District Court because her constitutional rights were violated.

She filed because she believes Dauggart v. Pappas, supra., and Halvorsen v. Ferguson & Burdell, supra., are unconstitutional.

Petitioner filed within one month after she had exhausted all state remedies. This has nothing to do with a statute of limitations issue. Petitioner does not believe that respondents' attorneys could possibly be unknowing of the law and believes their position is taken to obfuscate, confuse and divert the attention of the court. It has been a very successful strategy in state court.

The issue in this appeal, however, is the issue of being able to file in a Circuit Court other than the designated one if the designated one is biased.

Respondents' Brief did not answer the issue.

E. REPLY TO REASONS WHY A WRIT SHOULD NOT BE ALLOWED.

A Writ of Mandamus should be allowed in this case. No sanctions should be imposed because this petition is serious and involves constitutional issues. Petitioner does not consider the United States Constitution frivolous and is surprised that respondents and their attorneys do.

(1) Reply to Halvorsen Failed to State a Claim Below

The District Court should not have dismissed the action. Petitioner has three experts ready and willing to testify to the malpractice which immediately established a genuine issue of material fact. In addition she challenges Dauggart v. Pappas, supra., and Halvorsen v. Ferguson & Burdell, supra., on the grounds it creates a privileged class who need not follow the law of tort injury.

Since these cases have not been challenged previously, he claims have not be adjudicated. Neither has her claim that she was denied her right to trial by jury. (U.S. Constitution, Amendment 7.)

The cases cited by respondents do not support

their position. Williams v. State of Washington 554 F.2d 369 (9th Cir. 1977) involved asking for injunctive relief while a state action was pending. The Court stated its non-intervention policy in such cases. Only if constitutional rights were violated could the Federal Court intervene.

Clark v. Watchie 513 F.2d 994 (9th Cir. 1975) was a securities case. This case actually supports petitioner's case on the merits, which is the one she wants to appeal; however, the merits of the case is not at issue here.

It is difficult to believe that respondents' attorneys are claiming a statute of limitations in good faith. Petitioner filed in state court within the three year statute of limitations. She had to exhaust her state remedies before she chould file in Federal District Court. She filed within 30 days of the exhaustion of her state court remedies, and filed her Notice of Appeal within 30 days of the Order of Dismissal, an Order prepared by Karr, Tuttle et al., on their stationery and signed by the judge exactly as requested by that firm.

See Watson v. Buck 313 U.S. 387, 61 S. Ct. 962; Huffman v. Pursue, Ltd 420 U.S. 592, 95 C. Ct. 1200; Younger v. Harris 401 U.S. 53, 91 S. Ct. 746; Juidice v. Vail ____ U.S. ____, 97 S. Ct. 1211.

The issue of Summary Judgment is the merits of the appeal and is not at issue here. Suffice it to say, if three experts are ready to testify on the issue of malpractice, then reasonable men have differed and a genuine issue of material fact exists.

(2) Reply To The Eighth Circuit Properly Refused Halvorsen's Notice of Appeal

This case is a case of first impression which is why the Court should accept it and decide it. The cases cited by respondents and their attorneys are inapplicable. Preston Co. v. Raese 335 F.2d 827 (4th Cir. 1964) and Roofing & Sheet Metal Services, Inc. v. La Quinta Motor Inns, Inc. 689 F.2d 982 (11th Cir. 1982) deal with cases already transferred.

In petitioner's Petition at 4, the grounds for that is Halvorsen v. State of Washington, supra., wherein the Ninth Circuit upheld the right of

petitioner's ex-husband to search her home four times a year and denied her her right for oral argument. They also upheld, in the same case, the decision of three state appellate judges to "retroactively waive" a law and give a lower court a jurisdiction it did not have!

The comparable worth decision is very well known and needs no further discussion.

As to petitioner's assertions at 3, respondents admit to the prominence of William Wesselhoeft of Ferguson & Burdell who represented petitioner with such disasterous results. They also admit to the prominence of Karr, Tuttle, et al. As to Philip A. Talmadge, he was quoted in both the Seattle Times and the Seattle Post-Intelligencer, Seattle's two newspapers, as vowing to raise every judge's salary in the state of Washington. He introduced the bill and shepherded it through the legislature. The judges know who raised their salaries. That salaries are now set by a citizens committee is the result of public outcry and indignation.

This confirms the point that respondents and their attorneys are well-known, powerful firms in the state of Washington.

To file a case in a court already prejudiced is a denial of due process. State v. Cater's Motor Freight (1947) 27 Wn.2d 661 at page 667 states:

> The purpose of the constitutional guaranty of due process of law is to protect the individual from the arbitrary exercise of the powers of government. (Emphasis added.)

State ex rel. McFerran v. Justice Court (1940) 32 Wn.2d 544, 202 P.2d 927 states:

> It is fundamental that trial before biased and prejudiced judge would constitute denial of due process of law.

and at page 549 continues:

> The principle of impartiality, disinterestedness and fairness on the part of the judge is as old as the history of the courts...

In re Murchison 75 S. Ct. 623, 99 L. Ed. 942 states:

> A fair trial before a fair tribunal is a basic requirement of due process, and requires an absence of actual bias in trial of the case.

(3) Reply to Halvorsen's Petition Is Frivolous and Sanctions Should Be Imposed Against Her

As stated above, petitioner believes the term "frivolous" introduces an arbitrary element into the law. It should be abolished. Judges find it particularly easy to impose sanctions on pro se-ers as they have no organization to speak for them and are not organized. The attorneys can then praise the judges as upstanding judges to enhance their reputations. This amounts to nothing more than a system of kickbacks.

As to the chastisement given to petitioner by the Ninth Circuit in Halvorsen v. State of Washington supra., petitioner can only reiterate that the conclusions reached by those three is erroneous. She welcomes the opportunity to correct the record. To repeat, she visited three different attorneys who felt she had a very good case. Unfortunately, each wanted in the neighborhood of $10,000.00 to represent her on appeal. Not having that sum on hand,but thus encouraged, petitioner elected to pursue the

appeal pro se. The fact that the Ninth Circuit leaped to an erroneous conclusion supports petitioner's claim that she cannot obtain a fair hearing in the Ninth Circuit.

As to abusive pro se plaintiffs, petitioner does not believe any exist. In the United States, indeed in England previously, appeals have been provided for from the earliest times to prevent misguided figures of authority from abusing persons' rights. No one should be discouraged or intimidated from pursuing an appeal. This attempt to restrict access to the courts is the action of the defense insurance special interest group.

As the nationally known consumer protection advocate Ralph Nader, writing in 22 Gonzaga Law Review 15, "The Corporate Drive To Restrict Their Victims' Rights", warns:

> It is doubtful whether there has been anything like the present attack on injured victims' rights in the two hundred year history of the American civil justice system...

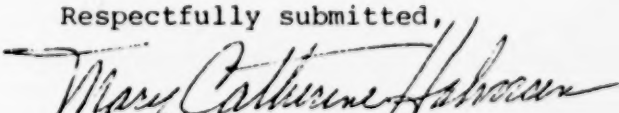
> In most states, as well as in Congress, proposals abound to restrict the rights of innocent victims to sue and be fully compensated for their injuries...
>
> All of these measures are aimed at weakening the American civil justice system which, embracing as it does important concepts of justice, still confronts people with formidable tasks, to recover compensation and win their day in court. These measures are part of a legislative package advocated by the property/casualty insurance industry seeking to enrich its already huge profits at the expense of the innocent victims...
>
> They call this package "tort reform", but is is one of the most unprincipled public relations scams in the history of American industry.

F. CONCLUSION

The Petition for Writ of Mandamus should be granted. No sanctions should be imposed. The Rule governing "frivolous" suits should be abolished and rescinded.

DATED this 3rd day of February 1988.

Respectfully submitted,



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